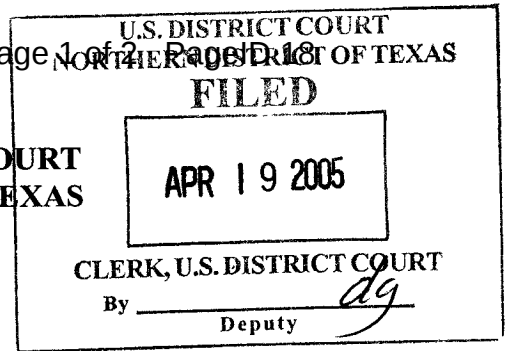


ORIGINAL



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAMES LOUIS MOSS,

Plaintiff,

v.

DR. VICTOR PERALTA, et al.,

Defendants.

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Civil Action No. 3:05-CV-0169-L

ORDER

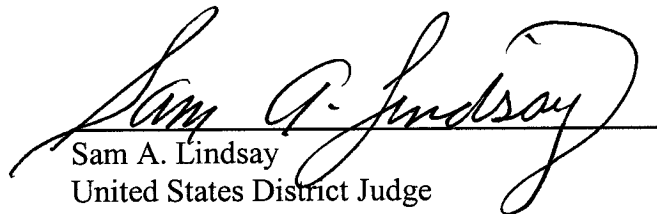
This a civil action wherein James Louis Moss ("Moss" or "Plaintiff") alleges that Dr. Victor Peralta ("Dr. Peralta") and Concentra Medical Center in Grand Prairie, Texas ("Medical Center") (collectively referred to as "Defendants") provided inadequate medical care for the pain in his leg and back. Pursuant to 28 U.S.C. § 636(b), and an order of the court in implementation thereof, this action was referred to the United States magistrate judge for proposed findings and recommendation. On March 21, 2005, the Findings, Conclusions, and Recommendation of the United States Magistrate Judge ("Report") were filed. Plaintiff has not filed objections to the Report.

The magistrate judge found that the court does not have subject matter jurisdiction over Plaintiff's claim and recommends that this action be dismissed for want of jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). Specifically, Plaintiff's complaint relates to a claim of medical malpractice and does not implicate any federal statutory or constitutional rights. Further, Plaintiff cannot rely on diversity of citizenship as a jurisdictional basis, as it is clear from the face of the complaint that Plaintiff and Defendants are citizens of Texas. As Plaintiff's complaint does not implicate a federal statute or the Constitution, and does not involve diversity of citizenship, no basis for federal

jurisdiction exist. The magistrate judge also recommends that Plaintiff's motions for appointment of counsel, filed January 26, 2005, and March 9, 2005, be denied as moot.

Having reviewed the pleadings, file and record in this case, and the findings, conclusions and recommendation of the magistrate judge, the court determines that the findings and conclusions of the magistrate judge are correct, and they are accepted as those of the court. Accordingly, Plaintiff's complaint is **dismissed without prejudice**; Plaintiff's Motion for the Appointment of Counsel, filed January 26, 2005 is **denied as moot**; and Plaintiff's Motion for the Appointment of Counsel, filed March 9, 2005 is **denied as moot**.

It is so ordered this 19~~th~~ day of April, 2005.


Sam A. Lindsay
United States District Judge